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Supreme Court of the United States

October Term, 1941

No 698

LULA W. GARLAND, TRUSTEE OF GREGORY G. GARLAND, A PERSON INCOMPETENT, AND CAMILLA WELLFORD GARLAND, INDIVIDUALLY,
Petitioners,

v.

UNITED STATES OF AMERICA

Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Fourth Circuit, and Brief in Support Thereof

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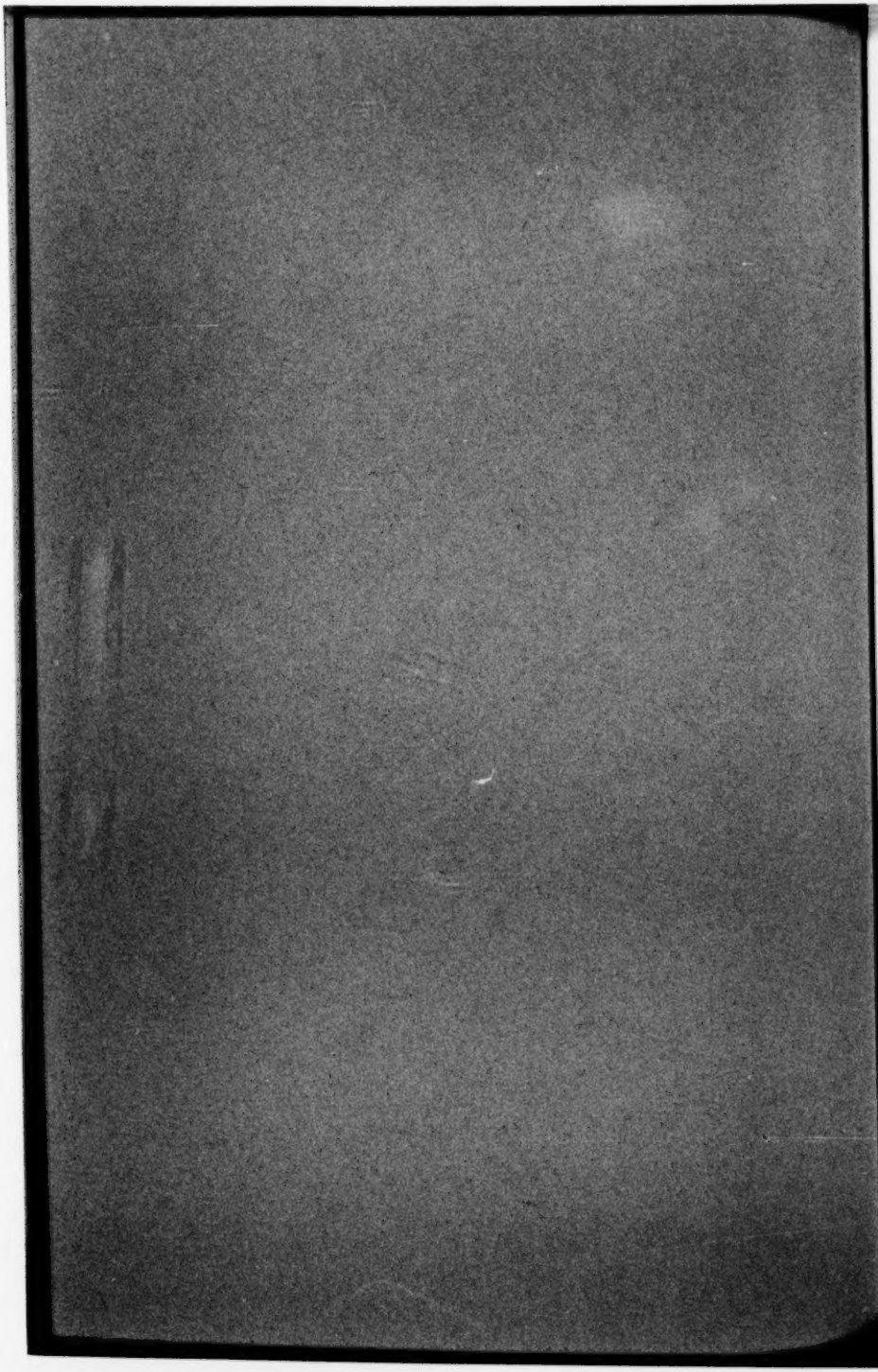
ROBERT C. DUVAL, JR.
JOHN B. DUVAL
Counsel for Petitioners.



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Petitioners,

v.

UNITED STATES OF AMERICA

Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Fourth Circuit

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioners, Lula W. Garland, Trustee of Gregory G. Garland, a person incompetent, and Camilla Wellford Garland, individually, respectfully pray for a review on writ of certiorari of the judgment of the United States Circuit Court of Appeals for the Fourth Circuit in favor of respondent entered on the 21st day of July, 1941, in the appeal therein pending wherein the above named respondent was appellant and your petitioners were appellees, the said

judgment reversing a judgment of the District Court of the United States for the Eastern District of Virginia, Richmond Division, in favor of your petitioners as plaintiffs.

A

SUMMARY STATEMENT OF THE MATTER INVOLVED

On February 27, 1933, Gregory G. Garland, now mentally incompetent, surrendered his United States Government life (converted) insurance policy of $10,000.00 for its cash surrender value (R. 13). On January 2, 1936, he filed with the Veterans' Administration a claim for benefits, alleging total permanent disability existing prior to the date of surrender, which claim was denied on the ground that the insured did not become totally and permanently disabled during the life of the policy. The disability relied upon was caused partly by physical impairment resulting from a fall, but was mostly due to an organic brain disease which is progressive and incurable. In 1937 it became necessary to have a trustee appointed for the veteran and on April 28, 1939, this trustee instituted suit against the United States, alleging that total and permanent disability had occurred during the life of the policy, that such disability had matured the executory policy into a claim for benefits which had never been released or paid, and further that the surrender had been made under a mutual mistake as to the existence of disability and should be rescinded by the court (R. 1). In the alternative it was alleged that at the time of surrender the insured was mentally incompetent and the surrender void.

The Government denied the allegations of the bill and took the position that the surrender of the policy was a final settlement of the insurance contract and estopped the veteran from enforcing the payment of disability benefits thereunder (R. 5). Upon interrogatories submitted by the trial court the jury found (1) that at the time of surrender the insured was totally and permanently disabled, (2) that he was mentally competent to effect the surrender, (3) that he surrendered his policy under the mistaken belief that no such disability existed, and (4) that the Government accepted such surrender under the mistaken belief that no such disability existed (R. 14). Upon the jury findings of total permanent disability and mutual mistake as to its existence the trial court entered judgment for the veteran's trustee rescinding the surrender agreement, reinstating the policy and directing payment of disability benefits (R. 20). The Government appealed and the Circuit Court of Appeals for the Fourth Circuit reversed, holding that the veteran was precluded from recovery by the surrender agreement and that the alleged mistake was not of such a nature as to justify a rescission of the surrender contract. The memorandum opinion of the trial court appears in the printed record filed herewith at pages 14 to 20, and the opinion of the Circuit Court of Appeals may be found at pages 24 to 32.

B

STATEMENT OF JURISDICTION

Jurisdiction of this Court is founded on Section 19 of the World War Veterans Act, 1924, as amended (Section 445,

title 38, United States Code), and on Section 240(a) of the Judicial Code, as amended (Section 347(a), title 28, United States Code).

The judgment of the United States Circuit Court of Appeals for the Fourth Circuit was entered July 21, 1941.

C

THE QUESTIONS PRESENTED

The questions presented here are as follows:

1. Whether a veteran who has surrendered his United States Government (converted) insurance policy for its cash value may claim benefits thereunder upon proof that at the time of such surrender he was already totally and permanently disabled.

2. Whether a trial court may reinstate and direct disability payments under a United States Government (converted) insurance contract, which has been surrendered by the insured for its cash value, upon jury findings that at the time of such surrender the insured was totally and permanently disabled and that he surrendered his insurance and the Government accepted such surrender under the mistaken belief that no such disability then existed.

Under the decision of the Circuit Court of Appeals there is involved in the above questions as a part thereof the following:

(a) Is mutual mistake as to the existence of total and permanent disability at the time the insurance is surrendered such mistake as goes to the substance of the surrender agree-

ment and constitutes proper ground for its rescission by the court?

(b) Is the existence of total permanent disability at the time the insurance is surrendered, which disability is not then known to the insured or the Government but is later found by a jury to have existed, such a *fact* that mutual mistake of the parties with respect thereto will furnish proper ground for rescission of the surrender agreement?

(c) Should the difficulty that might be caused the Veterans' Administration in computing reserves, gains, losses and dividends, and in obtaining final and binding releases under cash surrender agreements, outweigh the hardships resulting to insured veterans from a refusal to permit recovery or direct rescission, particularly when such veterans are entitled to a liberal construction of the insurance contract and the applicable statutes and a sympathetic consideration of their claims?

D

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT OF CERTIORARI

The Circuit Court of Appeals has:

1. Decided two important and closely related questions of federal law which have not been, but should be, settled by this court, namely:

(a) Whether or not a veteran who became totally and permanently disabled while his United States Government (converted) insurance contract was in force is precluded

from recovering disability benefits under such contract by reason of his having surrendered it for its cash value while so disabled.

(b) Whether or not a veteran whose United States Government (converted) insurance has been matured by total permanent disability into a claim for benefits, and who has surrendered his policy while so disabled for its cash surrender value only, is entitled to have such policy reinstated and benefits paid thereunder upon a jury finding of mistake on his part and on the part of the Government as to the existence of such disability at the time of the surrender.

2. Rendered a decision in principle directly in conflict with the decisions of other circuit courts of appeals in which the effect of mutual mistake as to the existence of total permanent disability on contracts with respect to war risk term insurance is adjudicated. See *United States* v. *Golden*, 34 F. (2d) 367 (C. C. A. 10th); *United States* v. *Schweppe*, 38 F. (2d) 595 (C. C. A. 8th); and *Heineman* v. *Heineman*, 50 F. (2d) 696 (C. C. A. 6th).

3. Decided the important questions of federal law set out in 1(a) and 1(b) above upon harsh and technical rules of law, without giving consideration to the remedial purposes of the World War Veterans Act, and without giving the veteran the benefit of the liberal construction of the insurance contract and the applicable statutes to which he has been held entitled.

WHEREFORE, petitioners respectfully pray that a writ of certiorari be issued to the United States Circuit Court of Appeals for the Fourth Circuit commanding that Court to

certify and send to this Court for its review and determination a transcript of the record and proceedings of said Court in the case numbered and entitled on its Docket, No. 4788, UNITED STATES OF AMERICA, *Appellant,* v. LULA W. GARLAND, TRUSTEE OF GREGORY G. GARLAND, A PERSON INCOMPETENT, AND CAMILLA WELLFORD GARLAND, INDIVIDUALLY, *Appellees,* and that the judgment entered therein be reversed by this Court, and that your petitioners may have such other and further relief in the premises as to this Court may seem meet and just.

LULA W. GARLAND, TRUSTEE OF GREGORY G. GARLAND, A PERSON INCOMPETENT, AND CAMILLA WELLFORD GARLAND, INDIVIDUALLY.

By ROBERT C. DUVAL, JR.,
JOHN B. DUVAL,
Counsel for Petitioners.